

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217**

EVERETT FRANK,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 11200-12.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

This is an action for collection review of (1) a Notice Of Determination Concerning Collection Action(s) Under Section 6320, dated December 15, 2011, sustaining the filing of a Federal tax lien in respect of income tax liabilities for the taxable (calendar) years 2004 and 2005 and (2) a Notice Of Determination Concerning Collection Action(s) Under Section 6330, also dated December 15, 2011, sustaining a proposed levy in respect of income tax liabilities for the taxable (calendar) years 2000, 2004, and 2005. Each of the notices of determination was issued by respondent's San Francisco Appeals Office and was sent to petitioner by certified mail on December 15, 2011, addressed to him at 1776 Botelho Dr., Apt 421, Walnut Creek, CA 94596, (henceforth the Botelho Drive address).

On May 4, 2012, petitioner filed a petition, which petition was delivered to the Court by the United States Postal Service in an envelope bearing a clearly legible postmark date of May 3, 2012. The return address appearing on the envelope, as well as on the petition itself, is the Botelho Drive address.

On June 26, 2012, respondent filed a Motion To Dismiss For Lack Of Jurisdiction. In his motion, respondent moves to dismiss this case on the ground that the petition was not filed within the time prescribed by I.R.C. sections 6320(c) and 6330(d).

On July 24, 2012, petitioner filed an Objection to respondent's motion. In his Objection, petitioner argues principally that his assessed liability for 2004 (and/or 2005) is grossly overstated because, inter alia, it reflects the sale of a personal residence without giving him the benefit of any basis.

On September 17, 2012, respondent filed a Response to petitioner's Objection. Notably, respondent attached as exhibits to his Response transcripts for, inter alia, petitioner's accounts for 2004 and 2005. The transcript of account for 2004 reflects the abatement on August 27, 2012, of tax in the amount of \$482,540, together with related penalties and statutory interest. The transcript of account for 2005 reflects the abatement on August 20, 2012, of tax in the amount of \$13,286, together with related penalties. (Presumably statutory interest will also be abated in due course.)

**SERVED Sep 27 2012**

Also attached as an exhibit to respondent's September 17, 2012 Response is a copy of a fax dated and sent by petitioner on September 2, 2011, to the assigned Appeals officer in respondent's San Francisco Appeals Office referencing "the attached letter". The attached letter is one dated August 18, 2011, from the Appeals officer addressed to petitioner at the Botelho Drive address regarding the so-called CDP hearing. Also noteworthy is the fact that petitioner's September 2, 2011 fax lists the Botelho Drive as petitioner's address.

### Discussion

In a collection review action, this Court's jurisdiction under sections 6320 and 6330 depends on the issuance of a notice of determination by respondent's Appeals Office and the filing of a timely petition. See Sarrell v. Commissioner, 117 T.C. 122, 125 (2001); Moorhous v. Commissioner, 116 T.C. 263, 269 (2001); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); see also Rule 330(b). A petition is timely if filed within 30 days of the date of mailing of a notice of determination. I.R.C. sec. 6330(d)(1). A petition that is timely mailed is deemed to be timely filed. I.R.C. sec. 7502(a).

In the present case, respondent has demonstrated that both notices of determination were properly sent to petitioner on December 15, 2011, by certified mail addressed to him at his last known address. Petitioner did not, however, file his petition until May 4, 2012, and the envelope in which it was mailed reflects a postmark date of May 3, 2012, which dates are both well after the expiration of the critical 30-day period.

The fact that petitioner had "recently moved to a large apartment building and was not known to the local postal delivery person" is unfortunate. However, the fact of the matter is that both of the December 15, 2011 notices of determination were properly addressed and were properly sent by certified mail.<sup>1</sup> That is all that the law requires. Petitioner's failure to timely appeal from such notices leaves the Court no alternative but to grant respondent's motion and to dismiss this case for lack of jurisdiction. It may be that the aforementioned abatements will satisfy petitioner, but if not, he may wish to explore the possibility of (and the conditions incident to) instituting a refund action in a United States district court or the United States Court of Federal Claims.

Premises considered, it is hereby

ORDERD that respondent's Motion To Dismiss For Lack Of Jurisdiction, filed June 26, 2012, is granted, and this case is hereby dismissed on the ground that the petition was not timely filed.

**(Signed) Robert N. Armen, Jr.**  
**Special Trial Judge**

Entered: **SEP 27 2012**

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<sup>1</sup> There is nothing in the record to suggest that the December 15, 2011 notices of determination were returned to respondent by the Postal Service and not delivered to petitioner at the Botelho address.